



# Bureau of TennCare Policy Manual

Policy No: ORG – 06-004 (rev 1)	
Subject: State Rules	
Approval: <i>D. J. Gaud</i>	Date: <i>1/4/2008</i>

## POLICY:

State rules will be filed timely and kept updated to provide the regulatory support for all operations of the TennCare program.

## DISCUSSION:

TennCare has a lengthy set of state rules. (These can be viewed on the TennCare website and the Secretary of State's website.) Rules must be filed or amended each time there is a change in the program, consistent with the definition of "rule" provided below. Rules provide statutory support for the activities TennCare carries out. The rulemaking process offers the public the opportunity to comment on draft rules before they become final.

TennCare's rules generally fall into one of two categories: Public Necessity rules and "regular" rules. Sometimes "emergency" rules are filed. Definitions of these terms are provided below.

Public Necessity rules can only be filed in certain situations, such as implementation of a change to the waiver that CMS has approved. They require statements of justification, as well as state budgetary impact statements. They are effective on the day they are filed, but they expire after **165 days**. They cannot be "renewed" as public necessity rules. They must be followed up with permanent rules in order to remain in effect.

The "regular," or permanent, rulemaking process takes much longer. **The minimum length of time between when a rule is filed and when it can become permanent is about four months, and the process usually takes much longer.**

## PROCEDURES:

### General

1. Each program manager at TennCare should be aware of all the rules that affect his or her program area. The program manager is responsible for assuring that the rules are appropriate and adequate for supporting the operations of his or her area. The program manager is responsible for identifying areas where rules or amendments to rules are required and for notifying the Policy Office when rules or rule changes are needed.
2. The Policy Office is responsible for preparing and processing rules. Preparation of a rule requires conducting research, preparing content, and circulating drafts for internal comments before arriving at a final version to submit for hearing.
3. Public Necessity rules require fiscal impact statements. The Policy Office will inform the Fiscal Budget staff as soon as a decision has been made to file a Public Necessity rule so that Fiscal Budget staff will have adequate time to prepare the fiscal impact statement.

### Preparing a rule for hearing

1. Rulemaking hearing rules may be written by the program area or they may be written by the Policy Office. Prior to initiating the rulemaking process, the person(s) proposing the rule shall conduct a review of whether the proposed rule affects small businesses. The person(s) proposing the rule shall prepare an Economic Impact Statement in accordance with TCA 4-5-402. The Economic Impact Statement will be an addendum to the final filing of the rulemaking hearing rule. Rules that are written by the program areas will be formatted and finalized by the Policy Office. Rules must be prepared in accordance with the format required by the Secretary of State's office.
2. The deadline for filing rules for hearing is the last working day of the month.
3. Since time is needed for completing the packaging of the rule and obtaining all the necessary in-house signatures, the content of the rulemaking hearing rules should be final **at least two working days** before the filing deadline. This means that every effort must be made by internal staff to complete and submit all comments **at least two working days** before the rule must be filed. Comments should be in writing.
4. The draft rule is filed with the Secretary of State's office, after which public notice of the rule is published in the Tennessee Administrative Register (TAR), which is produced monthly. (The TAR is available on-line at the Secretary of State's website.)

5. The rulemaking hearing cannot occur until the month after the rule is published in the TAR. Thus, if a proposed rule is filed on August 30, it will appear in the September TAR and it will be heard in October.

### **Promulgating the rule**

1. The Policy Office is responsible for conducting the rulemaking hearings in accordance with TCA 4-5, Part 2. When rules are filed for a particular program area, it is expected that the program manager and/or his/her designee will attend the rulemaking hearing.
2. At the rulemaking hearing, members of the public are given an opportunity to present both oral and written comments. After the rulemaking hearing is over, the Policy Office will consult with the program area about how these comments are to be used in revising the rule. The Policy Office and the program area will prepare written responses to all written comments. Copies of these written responses must be included in the "package" that is taken to the AG's office when the final rule is submitted for promulgation.
3. When all revisions are complete and all comments have been answered, the Policy Office will work with OGC to assure that the rule is filed with the AG's office and then the Secretary of State's office. **A final rule cannot become effective until 75 days after it has been filed with the Secretary of State.**

### **DEFINITIONS**

**Agency.** A state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or determine contested cases.

**Rule.** An agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of an agency. "Rule" includes the amendment or repeal of a prior rule, but does not include:

- (A) Statements concerning only the internal management of state government and not affecting private rates, privileges or procedures available to the public;
- (B) Declaratory orders;
- (C) Intra-agency memoranda;
- (D) General policy statements which are substantially repetitious of existing law;

- (E) Certain agency statements related to the use of highways or school curricula;
- (F) Certain rate filings; or
- (G) Statements concerning inmates of a correctional or detention facility.  
[Source: TCA 4-5-102.]

Types of rules other than rulemaking hearing rules:

1. Emergency rules are promulgated due to an immediate danger to the public health, safety, or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. [Source, TCA 4-5-208.]
2. Proposed rules are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in TAR, the rule will become effective 105 days after said publication date. *[Note: Hearings for these rules are required if the agency receives petitions from 25 people who will be affected by the rule, from a municipality that will be affected by the rule, from an association of 25 or more members, or by a majority vote of any standing committee of the General Assembly. Since all of TennCare's rules have wide impact, it has not been TennCare's practice to file "proposed rules."]*
3. Public necessity rules are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. [Source: TCA 4-5-209.]

**OFFICES OF PRIMARY RESPONSIBILITY:**

- Policy Office
- Office of General Counsel

**REFERENCES:**

[TCA 4-5 \(Part 1\)](#)

[TCA 4-5 \(Part 2\)](#)

[TCA 4-5 \(Part 4\)](#)

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